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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY: 

DEPUTY

Jonathan A. Paul (Bar No. CA 216455)
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Attorneys for Plaintiff
JEAN-CLAUDE DEMOSTHENIDY

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA

'07  2050 WQH (BLM)

JEAN-CLAUDE DEMOSTHENIDY, an
individual doing business as INTERACTIVE
DESIGN SYSTEMS,

Plaintiff,

vs.

FINLEY ENGINEERING GROUP, INC., a
Florida corporation; DOES 1 through 10,
inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND FOR
DECLARATORY RELIEF****DEMAND FOR JURY TRIAL**

Plaintiff Jean-Claude Demosthenidy, (hereinafter referred to as "Plaintiff" or "IDS")
hereby complains of Defendant Finley Engineering Group, Inc. (hereinafter referred to as
"Defendant" or "Finley"), and alleges as follows:

THE PARTIES

1. Jean-Claude Demosthenidy is an individual doing business as Interactive Design
Systems, having his office and principal place of business at 16885 Via Del Campo Court, Suite
207, San Diego, California 92127.

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1 2. Upon information and belief, Finley is a corporation organized and existing under
2 the laws of the State of Florida, with its principal place of business at 1589 Metropolitan
3 Boulevard, Tallahassee, Florida 32308.

4 3. The names and capacities, whether corporate, individual or otherwise, of
5 Defendants named in this complaint as DOES 1 through 10, inclusive, are unknown to Plaintiff.
6 Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named
7 Defendants are liable to Plaintiff on the causes of action herein alleged and, therefore, Plaintiff
8 sues said Defendants by said fictitious names. Plaintiff will move to amend this complaint when
9 the true names and capacities of said fictitiously named Defendants are ascertained.

10 4. All further references to "Finley" or "Defendants" shall include DOES 1 through
11 10.

12 5. The allegations of this Complaint stated on information and belief are likely to
13 have evidentiary support after a reasonable opportunity for further investigation or discovery.

14 **JURISDICTION AND VENUE**

15 6. This court has jurisdiction over the subject matter of this action pursuant to 28
16 U.S.C. §§ 1332(a) because Plaintiff and Defendants are citizens of different states and although
17 Plaintiff's damages have not yet been fully ascertained, upon information and belief, his
18 damages and the amount in controversy exceed \$75,000.00 exclusive of interest and costs.

19 7. Plaintiff is informed and believes, and thereon alleges, that Finley has conducted
20 and does conduct business within the State of California, directly or through intermediaries,
21 offers for sale, sells, and advertises its services in the State of California and the Southern
22 District of California.

23 8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(a).

24 **MATERIAL ALLEGATIONS**

25 9. Plaintiff develops and licenses engineering analysis software to assist engineers,
26 designers and builders to construct bridge structures. Plaintiff's MC3D Geometry Control
27 Software ("MC3D Software") aids professionals in modeling the construction of pre-cast
28 segmental box girder bridges.

1 10. On or about May 26, 2006, Finley purchased a license from Plaintiff to use the
2 MC3D Software and entered into an agreement for one year of support and maintenance for the
3 MC3D Software. The purchase price of the MC3D Software was \$2,900 per copy and the one
4 year support and maintenance agreement was \$600 per year.

5 11. On or about May 26, 2006, Plaintiff shipped one copy of the MC3D Software by
6 express courier from San Diego, CA to Finley's office in Tallahassee, FL. The MC3D Software
7 contained documentation explaining how the software operates ("Software Manual"). The
8 MC3D support and maintenance was provided from Plaintiff's office in San Diego, CA.

9 12. Included with the shipment to Finley was an end user license agreement entitled
10 the IDS Single User MC3D Software License Agreement ("License Agreement") (attached as
11 Exhibit 1). The License Agreement included the following conspicuous notice under the heading
12 "Warranty" in Section 5:

13 THE LICENSED SOFTWARE IS PROVIDED "AS IS". IDS
14 OFFERS NO WARRANTY OF ANY KIND, INCLUDING
15 PERFORMANCE, EXPRESS OR IMPLIED, WITH REGARD TO
16 THE LICENSED SOFTWARE AND ALL ACCOMPANYING
17 MATERIALS. IDS FURTHER DISCLAIMS ALL OTHER
18 WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT
19 LIMITED TO THE IMPLIED WARRANTIES OF
20 MERCHANTABILITY AND FITNESS FOR A PARTICULAR
21 PURPOSE, WITH REGARD TO THE LICENSED SOFTWARE
22 AND ALL ACCOMPANYING MATERIALS.

23 13. The License Agreement also included the following Disclaimer of Damages in
24 Section 7:

25 You assume responsibility for, among other things, (i) the selection of
26 the Licensed Software to achieve your intended results, (ii) the
27 acquisition of other software (including any programming or operating
28 system software) and/or equipment compatible with the Licensed
Software, and (iii) the installation, use and results obtained from the
Licensed Software. Further, for the express purpose of limiting the
liability against IDS, you agree that, to the maximum extent permitted
by law, IDS SHALL IN NO EVENT BE LIABLE FOR ANY
DAMAGES WHATSOEVER (INCLUDING WITHOUT

1 LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS,
2 BUSINESS INTERRUPTION, LOSS OF BUSINESS
3 INFORMATION, OR ANY OTHER PECUNIARY LOSS)
4 ARISING OUT OF THE USE OR INABILITY TO USE THE
5 LICENSED SOFTWARE, WHETHER DIRECT, INDIRECT,
6 INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHERWISE,
7 REGARDLESS OF THE FORM OF ACTION, EVEN IF IDS HAS
8 BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
9 (Emphasis in original)

10 14. The License Agreement includes a choice of law clause in Section 9 that states
11 that the laws of the State of California govern the conduct of the parties.

12 15. Section 9 of the License Agreement also includes a conspicuous clause that states:
13 "BY INSTALLING AND USING THE SOFTWARE YOU ACKNOWLEDGE THAT YOU
14 HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY
15 ITS TERMS AND CONDITIONS."

16 16. By installing and using the MC3D Software, Finley agreed to the terms and
17 conditions of the License Agreement.

18 17. Finley ordered and received a second license for the MC3D Software on or about
19 July 12, 2006 and Finley ordered and received a third license for the MC3D Software for use by
20 its client Cebus Rimon Industrialized Construction Ltd. ("Cebus Rimon"), on or about August 1,
21 2006.

22 18. On information and belief, Finley contracted with Cebus Rimon to provide
23 engineering services for the design of segmental bridges for the Ein Hakoreh Interchange Project
24 Highway 431 in Israel ("Project").

25 19. On information and belief, Defendants misused the MC3D Software when
26 providing engineering services on the Project by reversing coordinates from the basic assumption
27 of three-dimensional matrix engineering computations. Such an assumption is repeated and
28 illustrated in the Software Manual provided to Finley. The basic assumption of three
29 dimensional geometry computations is one referred to as "right hand rule", usually well known
30 to all civil and structural engineers. Defendants provided input coordinates in a "left hand rule"
31 system of coordinates, thereby violating the basic assumptions of positive elevations upward.

1 20. Defendants' error and failure to verify its data led to a design deviation of bridge
2 castings on the Project. According to Cebus Rimon, such deviation led to supplemental costs for
3 the construction of the Project amounting to approximately \$200,000.

4 21. On or about August 3, 2007, Cebus Rimon sent a letter to Finley (attached as
5 Exhibit 2), which demanded "whole indemnification and compensation by Finley, of any and all
6 damages and losses caused by any breach of the agreement by Finley (including the expert
7 performance undertaking)".

8 22. On or about September 13, 2007, Finley sent a demand letter to Plaintiff (attached
9 as Exhibit 3) claiming that Plaintiff is responsible for damages totaling \$257,000, including the
10 \$200,000 demanded of Finley by Cebus Rimon.

11 **FIRST CAUSE OF ACTION**

12 **(Trade Libel)**

13 23. Plaintiff repeats, realleges, and incorporates by reference the allegations set forth
14 in Paragraphs 1 through 22 of this Complaint.

15 24. On information and belief, on or about February 9, 2007 and again on June 29,
16 2007, Finley willfully, without justification, and without privilege communicated to Cebus
17 Rimon and others involved with the Project that the MC3D Software was defective and the
18 MC3D Software was the cause of the design deviation of bridge casting on the Project.

19 25. Finley's statements were made of and concerning the Plaintiff's MC3D Software
20 and were so understood by those who heard and read the statements.

21 26. Finley's statements disparaged Plaintiff's MC3D Software in that Finley's
22 statements falsely indicated that Plaintiff's MC3D Software was deficient and the cause of a
23 Project design error.

24 27. Finley's statements were false.

25 28. As a proximate result of Finley's publication of the statements, prospective
26 customers have been deterred from buying Plaintiff's MC3D Software and from otherwise
27 dealing with Plaintiff, and Plaintiff has thereby suffered injury to Plaintiff's business and
28 pecuniary loss in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Declaratory Relief)

29. Plaintiff repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 28 of this Complaint.

30. Plaintiff is informed and believes, and based thereon alleges that an actual controversy has arisen and now exists between Plaintiff on the one part, and Defendants on the other part, in that:

a. Plaintiff is informed and believes, and based thereon alleges that Defendants claim and contend that Plaintiff's MC3D Software was defective and that Plaintiff is responsible for consequential damages incurred by Defendants totaling approximately \$257,000; and

b. Plaintiff claims to the contrary as any of the alleged damages are the result of Defendants' errors and Defendants agreed before using the MC3D Software that Plaintiff would not be held liable for any pecuniary losses, whether direct, indirect, incidental, consequential, special or otherwise.

31. This declaration is necessary and appropriate at the present time in order to set at rest the continuing rights, duties, and obligations of the parties with respect to each other without the threat of subsequent legal action by Defendants and in order to avoid a multiplicity of actions.

32. Plaintiff hereby requests a declaratory judgment in favor of Plaintiff and against Defendants in accordance with its contentions alleged herein.

REQUESTED RELIEF

WHEREFORE, plaintiff prays judgment against Defendants, and each of them, as follows:

1. For a compensatory damage award in an amount according to proof;
2. For an order determining the Parties' rights and obligations under the License Agreement;
3. For an order enjoining continued trade defamation by Defendants against Plaintiff;

1 4. For interest, costs of suit and fees according to law and proof; and

2 5. For such other and further relief as the court may deem proper.

3
4 **THE TECH LAW GROUP, P.C.**

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6
7 Dated: October 29, 2007

By: 

Jonathan A. Paul
Attorneys for Plaintiff
JEAN-CLAUDE DEMOSTHENIDY
110 West C Street, Suite 2200
San Diego, CA 92101

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11 **DEMAND FOR TRIAL BY JURY**

12
13 Plaintiff hereby demands a trial by jury on all issues so triable.

14
15 **THE TECH LAW GROUP, P.C.**

16
17
18 Dated: October 29, 2007

By: 

Jonathan A. Paul
Attorneys for Plaintiff
JEAN-CLAUDE DEMOSTHENIDY
110 West C Street, Suite 2200
San Diego, CA 92101

MC3Dlicense.txt

IDS Single User MC3D Software License Agreement

IMPORTANT - READ CAREFULLY: This Single User MC3D Software License Agreement ("Agreement") is a legal agreement between you (either an individual or a single entity) and Interactive Design Systems ("IDS") for IDS's MC3D computer software and associated media (collectively, the "Licensed Software"). By continuing to use the Licensed Software, you agree to be bound by the terms of this Agreement.

1. GRANT OF LICENSE EXTENSION

This Agreement grants you (either as an individual or as a single entity) a limited non-exclusive, non-transferable license to use the Licensed Software and documentation. Your right to use the Licensed Software is limited to the terms and conditions described herein. You may use the Licensed Software and associated media solely for your own personal or internal purpose and for no other purpose: (a) if you have a single license; on only one computer at a time and by only one user at a time; (b) if you have acquired multiple licenses, the Licensed Software may be used either on stand-alone computers or on a computer network by a number of simultaneous users equal or less to the number than the number of licenses that you have acquired; and (c) if you maintain the confidentiality of the License Software at all times.

2. COPYRIGHT

The Licensed Software is owned by IDS and is protected by United States copyright laws and international treaty provisions. Therefore, you must treat the Licensed Software like any other copyrighted material (e.g., a book or musical recording), except that you may either (i) make one copy of the Licensed Software solely for backup or archival purposes, provided you reproduce and include IDS's copyright and trademark notices contained on the original disk labels on such backup copy, or (ii) transfer the Licensed Software to a single hard disk, provided you keep the original solely for backup or archival purposes. You may not copy the written materials accompanying the Licensed Software.

3. OTHER RESTRICTIONS

You may not use, copy, or modify the files containing the licensed software, or any backup copy, in whole or in part, or translate such files into any other file format or language, except as expressly provided for in this agreement. You may not rent, lease or sublicense the Licensed Software, and you may not transfer the Licensed Software and accompanying written materials. You may not reverse engineer, decompile or disassemble the Licensed Software for any purpose whatsoever.

4. TERM

Your license is effective upon your acceptance of this agreement and installing the Licensed Software. You may terminate it at any time by destroying the Licensed Software together with all copies. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy all copies of the Licensed Software in any form in your possession or under your control.

5. WARRANTY

MC3Dlicense.txt

THE LICENSED SOFTWARE IS PROVIDED "AS IS". IDS OFFERS NO WARRANTY OF ANY KIND, INCLUDING PERFORMANCE, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED SOFTWARE AND ALL ACCOMPANYING MATERIALS. IDS FURTHER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE LICENSED SOFTWARE AND ALL ACCOMPANYING MATERIALS.

6. CUSTOMER REMEDY

IDS DISCLAIMS ALL LIABILITY AND OFFERS NO CUSTOMER REMEDY WITH REGARD TO THE LICENSED SOFTWARE AND ALL ACCOMPANYING MATERIALS

7. DISCLAIMER OF DAMAGES

You assume responsibility for, among other things, (i) the selection of the Licensed Software to achieve your intended results, (ii) the acquisition of other software (including any programming or operating system software) and/or equipment compatible with the Licensed Software, and (iii) the installation, use and results obtained from the Licensed Software. Further, for the express purpose of limiting the liability against IDS, you agree that, to the maximum extent permitted by law, IDS SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE LICENSED SOFTWARE, WHETHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHERWISE, REGARDLESS OF THE FORM OF ACTION, EVEN IF IDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. UPDATES & TECHNICAL SUPPORT

IDS will make available to you Technical Support for this copy of the Licensed Software. IDS may, from time to time, revise or update the Licensed Software. In so doing, IDS incurs no obligation to furnish such revision or updates to you.

9. GENERAL

This License is personal between you and IDS. It is not transferable and any attempt by you to rent, lease, sublicense, assign or transfer any of the rights, duties or obligations hereunder, except as provided in Section 3, above, is void. This Agreement and the conduct of the parties hereto shall be governed by the laws of the State of California.

BY INSTALLING AND USING THE SOFTWARE YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND IDS WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN YOU AND IDS OR IDS'S AGENT(S) RELATING TO THE LICENSED SOFTWARE.

סיבוס רימון



Cebus Rimón

בנייה תחנתית רע"מ

Industrialized Construction Ltd.

Subsidiary of Africa Israel Investments Ltd. מקבוצת אפריקה ישראל להשקעות בע"מ

To

August 03, 2007

Mr. Craig Finley, Jr., P.E., President

Finley Engineering Group, Inc.

1589 Metropolitan Boulevard, Tallahassee, FL 32308-3776

USA

Dear Craig,

Re: Ein Hakoreh Interchange Project Highway 431 – Costs Report

1. Attached please find, a cost report with respect to Cebus Rimón (hereinafter – "Cebus") costs and damages caused as a result of the software deficiencies, software which was provided by Finley to Cebus (IDS' software) in the framework of the 431 Project (hereinafter – the "Project"). Cebus Damages and expenses, till the date hereof, summarized to a sum of 929,985 NIS. Please note that such damages may increase, once the final costs, which continue to be borne by Cebus, are assessed.
2. According to the signed agreement, Cebus shall be entitled for full and whole indemnification and compensation by Finley, of any and all damages and losses caused by any breach of the agreement by Finley (including the expert performance undertaking).
3. In regards to your letter, dated June 29, 2007 please note, that without detracting from any claim or demand of Cebus with respect to the performance of the software, there is no reason from Cebus' point of view, not to renew the yearly maintenance and support for the MC3D licensed by Finley, in order to enable Cebus to receive the required continuing services as to the agreement signed between our companies, and in order to prevent any further unnecessary damages and disturbance to the works in the Project.
4. Furthermore, based on the current situation, Cebus has no other options except for renewing the maintenance of the software, to prevent further damages, as aforementioned.
5. Nevertheless, Cebus rejects any attempt of IDS, to raise any unfounded claims such as "misuse" "misunderstanding" etc, as raised in IDS' 13th of July letter. Such claims are denied by Cebus, with no exceptions.



אזור תעשייה צפוני ליד ט"ל 08-9232270 08-9232327
Northern Ind. Zone, Ltd. Tel: 972-8-9232270 Fax: 972-8-9232327
E-mail: danya@danya-cebus.co.il Web Site: www.danya-cebus.com

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EXHIBIT 2

סיבוס רימון



Cebus Rimon

Industrialized Construction Ltd.

Subsidiary of Africa Israel Investments Ltd. מקבוצת אפריקה ישראל להשקעות בע"מ

6. As you well know, the deficiencies in the relevant works occur directly as a result of defects in such software provided to Cebus. Furthermore, the relations and disagreements between Finley and its subcontractors (such as IDS), are not relevant to Finley-Cebus' agreement whatsoever, since such relations have no bearing on Finley's comprehensive guarantee undertaking of such services to Cebus.
7. Please note, that the continued validity of the agreement between the parties is beyond any doubt and therefore Finley is expected and obliged to keep providing the services under the agreement.
8. Awaiting for your quick response regarding the attached cost report.
9. Nothing in this letter shall be deemed or construed as a waiver of any additional claims that Cebus may have in connection with the Project.

Sincerely yours,


Cebus Rimon Industrialized Construction Ltd.



Ein Hakoreh Interchange Project Highway 431

Supplemental Costs Report
resulting from a design error in
Bridge B21

Description of the project:

Construction of an interchange as part of Highway 431, which included 9 bridges, of which 4 were segmental bridges.

Designer of the segmental bridges: Finley Group, US.

Design of the foundations and piers up to the segmental level: Shamir Posner Brown – Ronen Brown

Segmental bridges

B20 – bridge length 192 m

B21 – bridge length 194 m

B22 – bridge length 307 m

B23 – bridge length 267 m

Width of all the bridges – 12 m.

Description of the method used for the construction of segmental bridges

Plant fabrication

The method is based on the construction of the bridge superstructure using elements produced under full control conditions at a precast fabricating plant.

The elements weigh between 50 tons and 70 tons and have dimensions of 300 cm to 12000 cm and a height of 2700 cm. They are produced in a special form fabricated for the purpose of casting of the segments using a sophisticated method according to the order of assembly in the field and according to coordinates that provide the form and final superposition as intended in the field after assembly.

For this purpose, the plant uses software that also provides coordinates and heights of the form prior to casting.

This software is called MC3D and was supplied by Finley, the bridge designer.

Assembly in the field

Following completion of the installation of the piers in the field (the columns and abutments), the assembly process is accompanied by the use of a large tracked crane with a suitable lifting capacity and another auxiliary crane.

The assembly process is also accompanied by an on-site surveyor who routinely checks the assembly location of two symmetrical elements and compares it to the tables have been supplied by the designer that provide both the coordinates and the heights of each element according to stage of assembly.

Description

As the assembly process of Bridge B21 which began on January 8, 2007 progressed, and the assembly of Column C in particular, we found that there was a deviation from the design with respect to the tables that were supplied by the designer.

This deviation increased as assembly of that column progressed. We advised the designer of the essence of the problem and transmitted to him the heights that were obtained as the assembly progressed.

At first, the designer did not accept our claims that there was a problem and recommended that we check again.

Following completion of the assembly on Column C, we could see that there was a serious problem that could not be solved and investigated the reason for it.

On February 9, 2007, a meeting with the designer was called and we shared our thoughts with him regarding the reason for the problem. In that same conversation, he agreed that there was a problem in the software that was supplied to the segment fabricating plant and recommended discontinuing with assembly of Bridge B21 until the issue was checked and a decision made as to how to proceed.

The status of the fabrication of the segments on (date) was that all of the elements for Bridges 21 and 22 were cast.

Some of the elements for Column B on Bridge 23 had been cast.

The situation in the field was that the support tower and hydraulic jacking system were prepared for Column D.

After it was decided that we could not continue with the assembly of this bridge, and in order to save time and to avoid equipment downtime

We decided to dismantle the tower and the jacking system for Column D on Bridge 21 and to move on to Column B of Bridge 22.

This is after it we received approval from the designer that we could begin the assembly of this column.

We progressed with the assembly of Columns A and B on Bridge 21, but since the fact that the two towers were being used, the first on Column C of Bridge 21 and the second on Column B of Bridge 22, a second stoppage of the assembly works was caused from February 27, 2007 through March 7, 2007. This caused downtime of assembly equipment and work crews, and of the survey team.

On February 18, 2007, Gary arrived in Israel in order to explain the error that had occurred and to present a solution.

Four days of marathon meetings were held with the designer Ronen Brown and his segmental bridge construction consultant Mr. Shmuel Motis, Nati's representative from the Design Department Mr. Yehuda Dogesh and the builder's Project Manager Yosef Rock.

On February 21, 2007, the conclusion was reached that what needed to be done, with the understanding that there were few options for correcting the error, was that we had to change the red line (the height of the asphalt) specifically on Bridge B21.

This brought about a change in the profile of the nosing, increasing it, and making it more complicated to construct, with a variable longitudinal cross-section. It also required use of a special form that needed to be manufactured specially for this bridge in addition to what we were required to prepare.

The additional load that was caused as a result of thickening of the asphalt layer changed the quantity of exterior stressing cables, which also constituted a certain addition [to the work].

Because of the deviation that accompanied us from the beginning of the assembly, we had to insert shims (20 x 20 cm x 2 mm thick sheetmetal plates) based on the designer's approval. This brought about the use of an additional quantity of glue that is spread between the segments, something that also brought about additional expenses for labor and materials.

**Summary of additional costs that were caused as a result of
a design error in the segmental bridges**

1. Additional costs as a result of stoppage of the work.

- a. From the date of the stoppage of the work on Bridge B21 to its renewal on Bridge B22.
 - The work on bridge B21 was stopped on February 6, 2007 and renewed on Bridge B22 on February 14, 2007 (a total of seven downtime days of a CC1000 crane, a T55 auxiliary crane, a crew of 11 workers, a foreman, an engineer and a surveyor).
- b. The second stoppage, because two of the towers were in use on two bridges (Column C of Bridge the 22 and Column B of Bridge B22).
 - The work on Column B of Bridge B22 ended on February 27, 2007 and was renewed on Bridge B21 on March 7, 2007 following the moving of the tower (a total of six days of downtime for a CC1000 crane, a T55 auxiliary crane, a crew of 11 workers, a foreman, an engineer and a surveyor).
- c. Equipment movement costs Bridge B21 to Bridge 22 and their return after renewal of the work on Bridge B21
 - In order to begin work on Bridge B22, there was a need to transfer a large amount of equipment from Bridge B21: stressing equipment: jacks, insertion machines, stressing bars, stressing cables (drums), auxiliary equipment used in assembly – spacers, ratchet chains, glue and mixing equipment, electrical feed: 5 laborers + foreman + 2 crane trucks (T85, T55) for a period of 3 days.
 - During the work on two bridges simultaneously, there was need to perform exterior stressing and grouting of the cables for the two bridges. Therefore, the grouting machine, cement bags, grouting material and exterior stressing equipment was moved.

Total cost: NIS 257,800

1. Additional costs as a result of stoppage of the work

Based on Item	Resource	Units	Qty	Unit price	Total	Comments
A, B	CC 1000 crane	Days	13	5,000	65,000	February 6-14, February 27-March 7
A, B, C	T55 crane truck		16	2,200	35,200	Item C movement of equipment, February 6-14, February 27-March 7
A, B, C	Workers	Hours	1,760	55	96,800	16 days x 11 workers x 10 hours

A, B, C	Foreman	Days	16	1,200	19,200	Item C movement of equipment, February 6-14, February 27-March 7
A, B	Engineer	Days	13	1,200	15,600	February 6-March 7
A, B	Survey team	Days	13	2,000	26,000	February 6-14, February 27-March 7
Total					257,800	NIS

2. Overhead – design works

During the week between February 18, 2007 and February 23, 2007, Finley's representative arrived in Israel and meetings were held with the participation of Shmuel Mottes, the on-site consultant for the segmental bridges, the representative of Netivei Hayovel, Yehuda Dougach and the representative of Danya Cebus, Yosef Rock.

Total cost: NIS 90,000

2. Design costs

Name of consultant	Work days	Hours per day	Hourly cost	Total	Comments
Shmuel Mottes	5	10	600	30,000	
Yehuda Dougach	5	10	600	30,000	
Yosef Rock	5	10	600	30,000	
Total				90,000	NIS

3. Additional auxiliary works

- a. Moving of the towers not in accordance with plan, assembly of the tower on Column D of Bridge B21, including the hydraulic jacking system and its disassembly after the problem was discovered. After being requested not to continue with the work on Bridge B21, it was decided to move the tower to Column B of Bridge B22.
 - Transfer of the bridge took place on February 12-14 from Column D of Bridge B21 to Column B of Bridge B22.

Total cost: NIS 25,700

3 Additional auxiliary works

Resource	Units	Qty	Unit price	Total	Comments
Moving of the tower	Units	1	8,500	8,500	Contractor price
Two T55 crane trucks	Days	2*3	2,200	13,200	Moving of the towers

Steps	Complete	1	4,000	4,000	Moving of the stepped scaffolding
Total				25,700	NIS

4. Changes in the piers

As a result of the error that was caused, it was decided to change the heights of the bridge. We were therefore requested to change Column E by increasing its height.

On Column D, we were requested to change the height of the bracket after its construction.

- a. Column E - raising the height of the column by an additional casting of 26.5 m³ of concrete.

Total cost: NIS 72,105

- b. Change in Column D - insertion of dowels and increasing the height of the brackets for the supports by roughening of the existing concrete and executing a supplemental casting over the existing brackets.

Total cost: NIS 20,950

4A

Costs resulting from changes in Column E

Resource	Units	Qty	Unit price	Total	Comments
Reinforcing steel	Tons	6.6	3,000	19,800	
Labor - reinforcing steel	Tons	6.6	1,000	6,600	
T55 crane truck	Days	4	2,200	8,800	
Concrete	Cu. m.	26.5	350	9,275	
Labor - concrete	Cu. m.	26.5	620	16,430	
Foreman	Days	3	1,200	3,600	
Engineer	Days	3	1,200	3,600	
Surveyor	Days	2	2,000	4,000	
Total				72,105	NIS

4B

Costs resulting from changes in Column D

Resource	Units	Qty	Unit price	Total	Comments
Labor	Hours	90	55	4,950	3 workers x 3 days x 10 hours
Surveyor	Days	1	2,000	2,000	Re-marking + checking prior to casting

Foreman	Days	1	1,200	1,200
Sikadur 42	Kg	120	60	7,200
Crane truck	Days	2	2,200	4,400
Engineer	Days	1	1,200	1,200
Total				20,950 NIS

5. **Additional shims used in all of the bridges:**

Shims were added according to the designer's instructions, including thickening of the glue layer between the segments with Sikadur 42 for attempting a correction of the deviation that was created.

- a. Sikadur 42 glue: addition of three containers (18 kg) to the segment.

Total cost: NIS 52,920

5A

Cost of additional materials as the result of the insertion of the shims

Resource	Units	Qty	Unit price	Total	Comments
Sikadur 31 glue	Kg	1260	42	52,920	70 segments x 3 containers x 6 kg/container A repair booklet from Finley + surveys and location of the shims is attached.
Total				52,920 NIS	

- b. Additional work time the purpose of insertion of the shims and spreading of the glue.

Additional work hours: 30 minutes per segment x 6 workers.
CC 1000 Crane, managers, surveyor.

Total cost: NIS 52,150

5B **Costs as a result of the insertion of shims**

Resource	Units	Qty	Unit price	Total	Comments
Workers	Hours	210	55	11,550	6 workers x 30 minutes x 70 segments
T55 crane truck	Days	3.5	2,200	7,700	30 minutes x 70 segments
CC 1000 crane	Days	3.5	5,000	17,500	30 minutes x 70

					segments
Foreman	Days	3.5	1,200	4,200	30 minutes x 70 segments
Engineer	Days	3.5	1,200	4,200	30 minutes x 70 segments
Surveyor	Days	3.5	2,000	7,000	30 minutes x 70 segments
Total				52,150	NIS

There were 70 segments in which the shims were inserted: 40 were inserted prior to the Finley's design of the correction + 30 were inserted to correct deviations that were created after surveying.

6. Cost/damage caused to the plant

6 Damages that were caused to the plant

Resource	Units	Qty	Unit price	Total	Comments
Site Manager	Hours	60	140	8,400	For checking of the survey material
Survey team	Hours	60	250	15,000	Surveys, checking of deviations, new versions of the software
Work stoppage	Hours	165	50	8,250	15 workers x 11 hours
Total				31,650	NIS

7. Redesign of the red line

Elements + fill material on both sides of the bridge.

7 Redesign of the red line

Resource	Units	Qty	Unit price	Total	Comments
Asphalt	Tons	580	212	122,960	
Redesign - red line + quality control	Complete	1	97,000	97,000	
Total				219,960	NIS

8. **Stressing of Bridge B21: additional stressing cables as a result of the addition to the design weight – additional dead weight (asphalt)**

- a. Additional cables: T18 - 17.4 m x 2 sides x 6 cables x 1.2 kg per meter
- b. Addition of a #19 anchor in place of a 2 x #13 anchor.
- c. Additional labor: 5 workers x 1.5 workdays.

Total cost: NIS 7,350

8 **Additional stressing cables**

Resource	Units	Qty	Unit price	Total	Comments
Cables	Tons	0.2506	3,915	981	
19 anchor instead of 13 anchor	Units	2	222	444	Price differential = 752-520
Workers	Hours	75	55	4,125	5 workers x 1.5 days
Foreman	Days	1.5	1,200	1,800	
Total				7,350	NIS

9. **Special form for the Bridge B21 nosing**

- a. Addition of 4 forms – \$2500 per form.
- b. Additional labor: 1 month x 4 workers for the extra time required for preparing a nosing with a variable cross-section for construction.
- c. Addition of 5 m³ of concrete + pumper truck.

Total cost: NIS 91,400

2 **Bridge B21 nosing**

Resource	Units	Qty	Unit price	Total	Comments
Nosing form	Meters	20	1,720	34,400	
Workers	Hours	1,000	55	55,000	25 workdays x 10 hours x 4 workers
Concrete + pumper	Cu. m.	5	400	2,000	
Total				91,400	NIS

10. Surveyor: workdays for the surveying crew

- a. Re-checking of the entire bridge after discovery of the error - 2 workdays.
- b. Checking during repair work. On February 21, 2007 - 1 workday.
- c. Re-checking of the entire bridge following the repair - 1 workday.

Total cost: NIS 8,000

10. Workdays for the surveying crew

Resource	Units	Qty	Unit price	Total	Comments
Re-checking of the entire bridge	Days	4	2000	8,000	
Total				8,000	NIS

Cost Summary Table

	Item	Cost	Comments
<u>1</u>	Downtime due to work stoppage	257,800	
<u>2</u>	Design costs	90,000	
<u>3</u>	Additional auxiliary works	25,700	
<u>4A</u>	Costs resulting from changes in Column E	72,105	
<u>4B</u>	Costs resulting from changes in Column D	20,950	
<u>5A</u>	Costs as a result of the insertion of shims	52,920	
<u>5B</u>	Costs as a result of the insertion of shims	52,150	
<u>6</u>	Damages that were caused to the plant	31,650	
<u>7</u>	Redesign of the red line	219,960	
<u>8</u>	Additional stressing cables	7,350	
<u>9</u>	Bridge B21 nosing	91,400	
<u>10</u>	Workdays for the surveying crew	8,000	
	Total	929,985	NIS

GUILDAY, TUCKER, SCHWARTZ & SIMPSON, P.A.

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CATHERINE B. CHAPMAN**
DANIEL J. KUHN
MARC A. PEOPLES
JAKEN E. ROANE
ALBERT J. WOLLERMANN

*ALSO ADMITTED IN LA

**ALSO ADMITTED IN GA

*BOARD CERTIFIED REAL ESTATE LAWYER

September 13, 2007

Mr. Jean-Claude Demosthenidy
Interactive Design Systems
16885 Via Del Campo Court, Suite 207
San Diego, CA 92127

Certified Mail/Return Receipt

RE: Use of MC3D Software by Finley Engineering Group, Inc. on
EinHakoreh Interchange (Israel)

Dear Mr. Demosthenidy:

This firm represents Finley Engineering Group, Inc. As you have previously been made aware by representatives of Finley Engineering Group, Inc. ("Finley"), use of MC3D Software by Finley to design and construct bridge segments on the Ein Hakoreh Interchange (Israel) project resulted in defective casting of a number of bridge segments. This caused added cost, inconvenience and delay to the project. These costs are now the subject of a demand by the contractor, Danya, against Finley. Additionally, Finley has incurred substantial expense in investigating the software deficiency and correcting the problems related to the miscast segments.

Responsibility for these costs is clearly with your company. Investigation revealed that proper use of the software resulted in misorientation of the cast segment because of a defect in the software program. Obviously, this was known to MC3D, as a "patch" was provided to Finley after this problem was identified. We have subsequently learned that the defect in the development of the software had previously surfaced on another project presumably resulting in the repair "patch." It is hard for Finley to understand why this "patch" was not provided once your company became aware of the problem. In any event, responsibility for Finley's losses and those of its client, Danya, are clearly your company's. We must therefore demand that your company immediately agree to indemnify Finley and assume full responsibility for the costs which have been incurred in identifying the software problem and remedying the consequences.

Mr. Jean-Claude Demosthenidy
 September 13, 2007
 Page 2

The amounts which Finley seeks from your company are the following:

		Est. USD
A.	Danya-Cebus claim (929,985 NIS) (see attached claim of Danya-Cebus)	\$ 200,000
B.	Remedial engineering fees – Finley	47,000
C.	Attorneys fees and costs (estimated)	10,000
	TOTAL	\$ 257,000

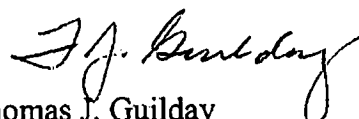
Finley hereby demand information be provided, including the name of any insurer providing coverage and the amount of coverage, pursuant to section 627.4137, Florida Statutes. This information must be provided within thirty (30) days.

In conclusion, Finley must receive an immediate response from your company which is responsive to this demand. At a minimum, we must be provided:

- A. Interactive Design Systems' ("IDS") commitment to respond to the losses which have been incurred;
- B. Identification of insurance coverage, if any.

If no response is received, we will assume that IDS intends to ignore its responsibilities. In that event, we will be forced to undertake reasonable steps to protect our client. We look forward to hearing from you.

Sincerely,



Thomas J. Guilday
 Marc A. Peoples

TJG/cj

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

143802 - SR

**October 29, 2007
13:25:46**

Civ Fil Non-Pris

USAO #: 07CV2050 CIV. FIL.

Judge.: WILLIAM Q HAYES

Amount.: \$350.00 CK

Check#: BC#1066

Total-> \$350.00

FROM: DEMOSTHENIDY V. FINLEY ENGINEER
DOES 1 - 10, CIVIL FILING

(Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

JEAN-CLAUDE DEMOSTHENIDY, an individual doing business as
INTERACTIVE DESIGN SYSTEMS

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

THE TECH LAW GROUP, P.C.
110 West C St., Suite 2200, San Diego, CA 92101 (619) 881-2305

DEFENDANTS

FINLEY ENGINEERING GROUP, INC., a Florida corporation;
DOES 1 through 10, inclusive

County of Residence of First Listed Defendant LEON
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

07 2050 WQH (BLM)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|--|---|--|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332(a) (Diversity)

Brief description of cause:

Plaintiff has been damaged by false and unprivileged statements published by Defendants

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
Greater than \$75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/29/2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

1143802

AMOUNT

8350.

APPLYING IFP

JUDGE

MAG. JUDGE

10/29/07

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